

IN THE WATER COURT OF THE STATE OF MONTANA
LOWER MISSOURI DIVISION
MUSSELSHELL RIVER ABOVE ROUNDUP BASIN (40A)
PRELIMINARY DECREE

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CLAIMANTS: Anna Fewless; William A. Fewless; Robert &
Joan Lunder Family Trust; Carl W. Openshaw;
Lisa M. Openshaw

CASE 40A-0382-R-2022
40A 180965-00

OBJECTOR: United States of America (USDA Forest Service)

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Water Right Claim 40A 180965-00 appeared in the Preliminary Decree for the Musselshell River, above Roundup (Basin 40A). The claim received an objection filed by the United States of America (USDA Forest Service).

The Court consolidated this claim into Water Court Case 40A-0382-R-2022 on January 21, 2022. The consolidation order scheduled an initial status conference. As a

result of the conference, the Court set a settlement deadline. Objector filed a stipulation on August 1, 2022.

FINDINGS OF FACT

1. The United States objected to the place of use, maximum acres, point of diversion, and means of diversion of Claim 40A 180965-00.

2. In the stipulation, the parties agree to the following regarding Claim 40A 180965-00:

1. The point of diversion should be amended as follows:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	<u>N2SE</u> <u>SW</u>	<u>SW</u> <u>SE</u> <u>NW</u>	36	9N	8E	MEAGHER

2. The place of use should be amended as follows:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		<u>N2SE</u> <u>SW</u>	<u>SW</u> <u>SE</u> <u>NW</u>	36	9N	8E	MEAGHER

3. The following information remark should be added to the point of diversion and place of use:

THE POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO MS 2292B.

3. Claim 40A 180965-00 should be modified as agreed upon in the stipulation. The requested remark should be added to the claim.

APPLICABLE LAW

1. A properly filed statement of claim is prima facie proof of its content. Section 85-2-227, MCA. The prima facie status of a claim may be overcome by a preponderance of the evidence. Section 85-2-227, MCA; Rule 19, W.R.Adj.R. A preponderance of the evidence is evidence that shows a fact is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

2. The Montana Water Court has a statutory obligation and the exclusive authority to adjudicate claims of existing water rights. Rule 1, W. R. Adj. R. An existing water right is a right to the use of water that would be protected under the law as it existed prior to July 1, 1973. Rule 2(a)(22), W.R.C.E.R.

3. The Water Court is not bound by any settlement or stipulation filed to resolve objections. Rule 17(a), W.R.Adj.R. If a settlement seeks to expand or enlarge an element of a claim, the parties must present evidence sufficient to meet the appropriate burden of proof. Rule 17(b), W.R.Adj.R. If a Claimant agrees to reduce or limit an element of a claim, the Court may accept the requested modification without further evidence overcoming the appropriate burden of proof. Rule 17(c), W.R.Adj.R.

4. The Water Court has the authority to hear all objections to the elements of any claim included in a Court issued Temporary Preliminary Decree or Preliminary Decree. Section 85-2-233, MCA.

CONCLUSIONS OF LAW

1. The changes described in the Findings of Fact may be made because the evidence in the record overcomes the prima facie status of the claim by a preponderance of the evidence.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusions of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A post-decree abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

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William A. Fewless
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Shepherd, MT 59079

Robert & Joan Lunder Family Trust
Robert & Joan Lunder, Trustees
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Billings, MT 59105

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MUSSELSHELL RIVER, ABOVE ROUNDUP
BASIN 40A

Water Right Number: 40A 180965-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Owners:

LUNDER, ROBERT & JOAN FAMILY TRUST
ROBERT & JOAN LUNDER TRUSTEES
3100 GREICK LANE
BILLINGS, MT 59105

CARL W OPENSHAW
2950 HAALAND RD
SHEPHERD, MT 59079

LISA M OPENSHAW
2950 HAALAND RD
SHEPHERD, MT 59079

WILLIAM A FEWLESS
545 SHEPHERD ACTON RD
SHEPHERD, MT 59079

ANNA FEWLESS
545 SHEPHERD ACTON RD
SHEPHERD, MT 59079

OWNERSHIP UPDATE PROCESSED TO ADD NEW OWNERS. THE WATER RIGHT
MAY BE SPLIT INTO SEPARATE WATER RIGHTS UPON REQUEST OF THE OWNERS.

Priority Date: MARCH 16, 1888

Type of Historical Right: FILED

Purpose (use): DOMESTIC

Flow Rate: 40.00 GPM

Volume: 1.80 AC-FT

Households: 2

Source Name: SPRING, UNNAMED TRIBUTARY OF EAST FORK CHECKERBOARD CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		N2SE	NW 36	9N	8E	MEAGHER

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: FLOWING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			N2SE	NW 36	9N	8E	MEAGHER

Remarks:

THE POINT OF DIVERSION AND PLACE OF USE ARE LIMITED TO MS 2292B.